

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

PLANNED PARENTHOOD SOUTH)
ATLANTIC, *et al.*,)
)
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Plaintiffs,)
)
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v.)
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JOSHUA STEIN, *et al.*,) Case No. 1:23-cv-00480-CCE-LPA
)
)
Defendants,)
)
)
and)
)
)
PHILIP E. BERGER, *et al.*,)
)
)
Intervenor-Defendants.)

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Under Federal Rule of Civil Procedure 56(a) and Local Rule 56.1, Plaintiffs Planned Parenthood South Atlantic and Dr. Beverly Gray move for summary judgment on their claims challenging the constitutionality of the Hospitalization Requirement, requiring that abortions after the twelfth week of pregnancy be performed in a hospital,¹ and the IUP Documentation Requirement, requiring that providers document the “existence of an intrauterine pregnancy” before initiating a medication abortion.²

¹ See N.C. Gen. Stat. § 90-21.81A (the “Twelve-Week Ban”); *id.* §§ 90-21.81B(3), 90-21.81B(4) (creating rape, incest, and life-limiting anomaly exceptions to the Twelve-Week Ban); *id.* § 90-21.82A(c) (requiring abortions provided after the twelfth week of pregnancy to be performed in a hospital).

² See N.C. Gen. Stat. § 90-21.83B(a)(7).

As explained more fully in the accompanying brief, summary judgment for Plaintiffs is warranted because the Hospitalization Requirement's distinction between abortion and miscarriage management is not rationally related to North Carolina's asserted interest in patient safety, in violation of the Equal Protection Clause of the Fourteenth Amendment. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985); *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *Romer v. Evans*, 517 U.S. 620, 632 (1996). Summary judgment for Plaintiffs is further warranted because the IUP Documentation Requirement fails to "include sufficient standards to prevent arbitrary and discriminatory enforcement" or to "give a person of ordinary intelligence adequate notice of what conduct is prohibited," *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 272 (4th Cir. 2019) (en banc), and, moreover, bears no rational relationship to patient safety, *Doe v. Settle*, 24 F.4th 932, 943–44, 953 (4th Cir. 2022), *Romer*, 517 U.S. at 635, all in violation of the Due Process Clause of the Fourteenth Amendment.

Plaintiffs' motion is supported by their Brief in Support of Plaintiffs' Motion for Summary Judgment; the Declaration of Katherine Farris, M.D., FAAFP, in Support of Plaintiffs' Motion for Summary Judgment (Ex. A); the Declaration of Christy M. Boraas Alsleben, M.D., M.P.H., in Support of Plaintiffs' Motion for Summary Judgment (Ex. B); the transcript of the deposition of Catherine J. Wheeler, M.D. (Ex. C); the transcript of the second deposition of Susan Bane, M.D., Ph.D. (Ex. D); the transcript of the second deposition of Monique Chireau Wubbenhorst, M.D., M.P.H. (Ex. E); the transcript of the September 25, 2023, hearing on Plaintiffs' motion for a preliminary injunction (Ex. F); and

the existing record in this case, including all previously filed declarations and deposition transcripts.

Plaintiffs respectfully request that this Court grant Plaintiffs' motion for summary judgment; declare the Hospitalization Requirement and IUP Documentation Requirement unconstitutional under the Fourteenth Amendment to the U.S. Constitution; and enter an order permanently enjoining enforcement of these restrictions. Plaintiffs respectfully request the opportunity to present oral argument in support of this motion.

Dated: March 1, 2024

Respectfully submitted,

/s/ Kristi Graunke

Kristi Graunke
NC Bar # 51216
Jaclyn Maffetore
NC Bar # 50849
American Civil Liberties Union
of North Carolina Legal Foundation
P.O. Box 28004
Raleigh, NC 27611
Tel.: (919) 354-5066
kgraunke@acluofnc.org
jmaffetore@acluofnc.org

COUNSEL FOR ALL PLAINTIFFS

Brigitte Amiri*
Lindsey Kaley*
Ryan Mendias*
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2633
bamiri@aclu.org
lkaley@aclu.org
rmendias@aclu.org

COUNSEL FOR BEVERLY GRAY, M.D.

/s/ Hannah Swanson

Hannah Swanson*
Planned Parenthood Fed. of America
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005
Tel.: (202) 803-4030
hannah.swanson@ppfa.org

Anjali Salvador*
Vanessa Pai-Thompson*
Planned Parenthood Fed. of America
123 William Street, 9th Floor
New York, NY 10038
Tel.: (212) 541-7800
anjali.salvador@ppfa.org
vanessa.pai-thompson@ppfa.org

COUNSEL FOR PLANNED
PARENTHOOD SOUTH ATLANTIC

**Special appearance filed*

CERTIFICATE OF SERVICE

I hereby certify that, on March 1, 2024, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which served notice of this electronic filing to all counsel of record.

/s/ Hannah Swanson

Hannah Swanson*
Planned Parenthood Fed. of America
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005
Tel.: (202) 803-4030
hannah.swanson@ppfa.org

**Special appearance filed*